



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/8/2021 9:56:15 AM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Tax TITLE-SERIES: 110-15L
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 110-15L Exemption for Repair, Remodeling, and Maintenance of Aircraft

PRIMARY CONTACT

NAME: MARK S MORTON
ADDRESS: PO Box 1005
Charleston, WV 25324
EMAIL: taxlegal@wv.gov
PHONE NUMBER: 304-558-5330

CITE STATUTORY AUTHORITY: W. Va. Code §11 15-9t

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Tax Commissioner is granted general rule making authority pursuant to W. Va. Code §11-10-5. In addition, the proposed new rule is required by the provisions of W. Va. Code §11-15-9t(c). The rule provides definitions, sets forth what is eligible for exemption from the sales and use tax under the relevant statute, and provides guidance regarding how to properly claim the exemption.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/2/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/7/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

POSTED ON WV STATE TAX DEPARTMENT WEBSITE

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The proposed new rule explains and clarifies administrative and procedural requirements for the consumer sales and service tax exemption for purchases of services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The proposed new rule is required by the provisions of W. Va. Code §11-15-9t(c). The rule provides definitions, sets forth what is eligible for exemption from the sales and use tax under the relevant statute, and provides guidance regarding how to properly claim the exemption.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This legislative rule establishes and provides guidance for the Exemption for Repairs, Remodeling, and Maintenance of Aircraft. The legislation provides for an exemption from sales and use tax for purchases of certain services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft. The legislation expands on the Consumer Sales Tax exemptions for aircraft repair and maintenance currently in W.Va. Code. The legislative rule adjusts the effective date of the exemption to apply to sales made on and after January 1, 2022. The legislative rule has a Sunset Provision which provides that the rule shall terminate and have no further effect on and after August 1, 2027. The legislation will result in a loss of State sales tax revenue of approximately \$250,000 in FY2022 and \$600,000 in subsequent fiscal years. Additional costs incurred by the State Tax Department would be \$5,000 in FY2022.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This legislative rule establishes and provides guidance for the Exemption for Repairs, Remodeling, and Maintenance of Aircraft. The legislation provides for an exemption from sales and use tax for purchases of certain services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft. The legislation expands on the Consumer Sales Tax exemptions for aircraft repair and maintenance currently in W.Va. Code. The legislative rule adjusts the effective date of the exemption to apply to sales made on and after January 1, 2022. The legislative rule has a Sunset Provision which provides that the rule shall terminate and have no further effect on and after August 1, 2027. The legislation will result in a loss of State sales tax revenue of approximately \$250,000 in FY2022 and \$600,000 in subsequent fiscal years. Additional costs incurred by the State Tax Department would be \$5,000 in FY2022.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

This legislative rule establishes and provides guidance for the Exemption for Repairs, Remodeling, and Maintenance of Aircraft. The legislation provides for an exemption from sales and use tax for purchases of certain services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft. The legislation expands on the Consumer Sales Tax exemptions for aircraft repair and maintenance currently in W.Va. Code. The legislative rule adjusts the effective date of the exemption to apply to sales made on and after January 1, 2022. The legislative rule has a Sunset Provision which provides that the rule shall terminate and have no further effect on and after August 1, 2027. The legislation will result in a loss of State sales tax revenue of approximately \$250,000 in FY2022 and \$600,000 in subsequent fiscal years. Additional costs incurred by the State Tax Department would be \$5,000 in FY2022.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	5,000.00	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	5,000.00	0
2. Estimated Total Revenues	0	-250,000.00	-600,000.00

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This legislative rule establishes and provides guidance for the Exemption for Repairs, Remodeling, and Maintenance of Aircraft. The legislation provides for an exemption from sales and use tax for purchases of certain services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft. The legislation expands on the Consumer Sales Tax exemptions for aircraft

repair and maintenance currently in W.Va. Code. The legislative rule adjusts the effective date of the exemption to apply to sales made on and after January 1, 2022. The legislative rule has a Sunset Provision which provides that the rule shall terminate and have no further effect on and after August 1, 2027. The legislation will result in a loss of State sales tax revenue of approximately \$250,000 in FY2022 and \$600,000 in subsequent fiscal years. Additional costs incurred by the State Tax Department would be \$5,000 in FY2022.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

SERIES 15L
EXEMPTION FOR REPAIR, REMODELING, AND MAINTENANCE OF AIRCRAFT

§110-15L-1. General.

1.1. Scope. -- This rule explains and clarifies administrative and procedural requirements for the consumer sales and service tax exemption for purchases of services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft as set forth under W. Va. Code §11-15-9t.

1.2. Authority. -- W. Va. Code §11-15-9t.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2027.

§110-15L-2. Definitions.

2.1. Unless a specific definition is provided in subsection 2.2 of this section, or the context in which the term is used clearly requires a different meaning, the terms used in this rule have the definitions provided under W. Va. Code §11-10-1, et seq., §11-15-1, et seq., §11-15A-1, et seq., or §11-15B-1, et seq.

2.2. As used in this rule:

2.2.1. "Directly used or consumed," in the context of repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for an aircraft shall mean used or consumed in those activities which constitute an integral and essential part of such activities, as contrasted with, and distinguished from those activities which are simply incidental, convenient, or remote to such activities.

2.2.1.a. Sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for an aircraft shall include only:

2.2.1.a.1. Machinery, tools, or equipment physically incorporated into the finished aircraft, or physically incorporated into the finished aircraft engine or aircraft component part on an aircraft, because of repair, remodeling, or maintenance activities;

2.2.1.a.2. Machinery, tools, or equipment used exclusively for repairing, remodeling, or maintaining aircraft; or

2.2.1.a.3. Machinery, tools, or equipment used exclusively for repairing, remodeling, or maintaining aircraft that qualifies for the exemption under §11-15-9(a)(33) of the W. Va. Code.

§110-15L-3. Exemption from the Consumer Sales and Service Tax.

3.1. The following sales are exempt from the consumer sales and service tax:

3.1.1. Sales of aircraft repair, remodeling, and maintenance services when the services are to an engine or other component part of an aircraft;

3.1.2. Sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft, as part of the repair, remodeling, or maintenance service; and

3.1.3. Sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines, or aircraft component parts for an aircraft, or used exclusively in combination with the purposes specified in W. Va. Code §11-15-9(a) and the purposes specified in W. Va. Code §11-15-9(a)(33) of this code.

3.2. This exemption applies to sales made on and after September 1, 2021.

§110-15L-4. Exemption from Use Tax

Tangible personal property or services are exempt from use tax where (a) the gross receipts from the sale of the personal property or services are exempt from the sales tax by the terms of §11-15-1, *et seq.*, of the W.Va. Code, and (b) the property or services are being used for the purpose for which it is exempted from the use tax imposed under W. Va. Code §11-15A-1, *et seq.*

§110-15L-5. Claiming the Exemption.

5.1. Any person having a right or claim to the exemption set forth in this rule may claim the exemption by:

5.1.1. First paying to the vendor the tax imposed by this article and then applying to the Tax Commissioner for a refund or credit; or

5.1.2. Providing to the vendor his or her West Virginia direct pay permit number, as provided in §11-15-9d and §11-15A-3d of the W. Va. Code and W. Va. Code State R. §110-15-9c; or

5.1.3. A person having a right or claim to the exemption set forth in this rule may, in lieu of paying the sales tax and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. The Tax Commissioner finds that the requirement that permission to execute such a certificate be granted specifically upon application of the Tax Commissioner is unnecessary, and so generally grants permission to execute such a certificate.

5.2. Any person having a right or claim to the exemption set forth in this rule may apply for a refund or credit by timely filing a claim for refund or credit of the consumers sales and service tax or the use tax overpayments on such form and in such manner as the Tax Commissioner may require and in accordance with the requirements of §11-10-1, *et seq.* and §11-15-1, *et seq.* of the W.Va. Code and W. Va. Code State R. §110-15-1, *et seq.*, and W. Va. Code State R. §110-10L-1, *et seq.*

5.3. Any person having a right or claim to the exemption set forth in this rule may use an exemption certificate as follows:

5.3.1. To purchase tangible personal property or services using an exemption certificate, a person must:

5.3.1.a. Apply for and obtain a valid West Virginia Business Registration Certificate; and

5.3.1.b. Properly complete an Exemption Certificate, in the form required by the Tax Commissioner, and present it to the vendor or retailer.

5.3.2. An exemption may be rendered void and invalid due to fraud, error, deficient or incomplete records or documentation, failure to retain records, or acceptance or use of an exemption certificate in bad faith.

5.3.2.a. If the Tax Commissioner believes that the exemption certificate was incomplete, deficient, or otherwise erroneous, or that the taxpayer was not entitled to claim the exemption for any reason, the Tax Commissioner may proceed to investigate and determine or estimate the tax liability and make an assessment therefor as permitted under W. Va. Code §11-10-1, *et seq.*

5.3.2.b. In order that the Tax Department may verify the taxable and nontaxable sales upon audit, a taxpayer claiming an exemption under this rule must retain the appropriate books and records supporting its claim for exemption for at least three (3) years, or for so long as the taxable period remains open for assessment or refund, whichever is greater.

5.3.3. In order that the Tax Department may verify a vendor's or a retailer's taxable and nontaxable sales upon audit, it is necessary that such persons retain executed exemption certificates and other appropriate books and records for at least three (3) years or for so long as the taxable period remains open for assessment or refund, whichever is greater. An exemption certificate, to be valid, must be given by the vendee and accepted by the vendor at the time of the sale and not thereafter. If a vendor lists nontaxable sales or services for which the vendor has no exemption certificate, the Tax Department will presume such sales were taxable and assess the tax against the vendor.